IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL (STAMP) NO. 22206 OF 2007
WITH
CIVIL APPLICATION NO. 325 OF 2007
IN
WRIT PETITION NO. 7243 OF 2007

Haresh Motiram Aswani,)
Age Adult, Occupation -)
residing at H.B. 31/3 Pimpri Colony,)
Pune-411 017)... Appellant

versus

1. Returning Officer,)
The Seva Vikas Sahakari Bank Ltd.,)
Laxmi Market, Pimpri, Pune-411 017.)

2. The Manager,)
The Seva Vikas Sahakari Bank Ltd.,)
Laxmi Market, Pimpri, Pune-411 017.)
& 51 others.)...Respondents

WITH
LETTERS PATENT APPEAL (STAMP) NO. 22209 OF 2007
WITH
CIVIL APPLICATION NO. 326 OF 2007
IN
WRIT PETITION NO. 7244 OF 2007

Gurubaksh Vishandas Pahalani ...Appellant

versus

Returning Officer and others ...Respondents

In both matters:

Mr. G.S. Godbole for the appellants.
Mr. R.V. Govilkar for respondent No.1.
Mr. Ravi Kadam, Advocate General, with Mr. A.A. Kumbhakoni, Associate Advocate General and Mr. S.R. Nargolkar, Assistant Government Pleader, for the State.

CORAM: **SWATANTER KUMAR, C.J.** &

DR. D.Y. CHANDRACHUD, J.

Judgment reserved on : October 04, 2007
Judgment delivered on: October 11, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

The learned single Judge vide order dated 28th September, 2007, while holding that the petitioners had earned disqualification under bye-law No. 31 (iii) of the Seva Vikas Co-operative Bank Limited, respondent No.2 herein, dismissed both the writ petitions summarily, giving rise to the above noted two appeals.

2. The appellant in LPA (Stamp) No. 22206 of 2007 is a partner of M/s. S.H. Associates, under a partnership deed dated 29th September, 1997. The partnership concern of the appellant had not availed of any loan from the Seva Vikas Sahakari Bank Limited, respondent No.2 herein.

3. The Reserve Bank of India on 12th March, 2007, had issued guidelines regarding advances and loans to the Directors of Primary Urban Co-operative Banks. The said guidelines also permitted the Directors of such Banks and their relatives to avail of loans against Fixed Deposits and Life Insurance Policies. The partnership concern deposited various Fixed Deposit Receipts with the respondent-Bank and against security of the said fixed deposits, respondent No.2 issued a Bank Guarantee in favour of the partnership concern. The respondent-Bank published the election programme on 5th September, 2007 and the Returning Officer was appointed in terms of Rule 56-K of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as “the Rules”). The respondent-Bank had issued a certificate in favour of the appellant stating that he was neither a loanee nor a guarantor as on 8th September, 2007, but there was non-funded facility i.e. Bank Guarantee which was fully secured. The Election Officer, vide his order dated 13th September, 2007, rejected the nomination of the appellant stating that the appellant was disqualified from contesting the election in terms of bye-law 31 (iii) of the respondent-Bank. This order was challenged by the appellant in an appeal before the District Deputy Registrar, Co-operative Societies, Pune, under Section 152-A of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to

as “the Act”), being Appeal No. 18 of 2007 which was also dismissed vide order dated 24th September, 2007. Aggrieved from the said order, the appellant herein and appellant in LPA (Stamp) No. 22209 of 2007 filed the above writ petitions in this Court which, as already noticed, were dismissed by the learned single Judge. Being aggrieved and dissatisfied with the order dated 28th September, 2007, the appellants have filed the present appeals.

4. The learned single Judge primarily dismissed the writ petitions summarily on the ground that the writ petitions were not capable of being disposed of without obstructing or halting the election process.

5. At the outset, we may notice that it is a settled principle of law that once the election process has started, the Courts normally would not interfere by means of a writ petition and the parties could take recourse to election petition or such other remedies as are provided under the special statute. Reference in this regard can also be made to the judgment of the Supreme Court in the case of *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another* vs. *State of Maharashtra and others [(2001) 8 SCC 509],* where the Supreme Court was concerned with the provisions of the

Maharashtra Specified Co-operative Societies Elections to Committee Rules, 1971. While considering the question of maintainability of the writ petition, the Supreme Court held as under:

> "In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

6. The appellants, however, while relying upon the judgment of the Supreme Court in the case of *Pundlik* vs. *State of Maharashtra and others* [(2005) 7 SCC 181] and *Ahmednagar Zilla S.D.V. & P.Sangh Ltd. And another* vs. *State of Maharashtra and others [(2004) 1 SCC 133],* contended that the present writ petitions would be maintainable. The facts of Pundlik's case are entirely different inasmuch as the Court in that case was concerned with the order of the Collector refusing to change the name of the delegatee of the voting society and the writ

petition was entertained. In regard to Shri Sant Sadguru's case, the Supreme Court held that the same was distinguishable on facts. In the present case, the election process has already commenced and the process of election does not suffer from any infirmity in regard to electoral process. For reasons which have been recorded, the Returning Officer as well as the Appellate Authority exercising its power under Section 152-A of the Act held that the appellant was disqualified in the facts and circumstances of the case and thus his nomination could not be accepted. In our considered opinion, the present case is squarely covered by the judgment of the Supreme Court in Shri Sant Sadguru's case and the view taken by the learned single Judge that the writ petition was not maintainable as it would result in halting the process of election, does not suffer from any legal or factual infirmity.

7. Besides the above, we would also deal with the contention of disqualification raised by the appellants in regard to bye-law 31 (iii). The said bye-law reads as under:

> "A member shall not be eligible to be elected as Director if he/she or his wife or her husband is a loanee or a guarantor on the first day of nomination."

8. A bare reading of the bye-law shows that as and when a person is a loanee or a guarantor, that member is not eligible to be

elected as a Director. A plain reading of this bye-law shows that if a person who has a financial liability towards the Bank, in the capacity as a loanee or guarantor, he would not be eligible to be elected as a Director. The expression used under this bye-law cannot be construed strictly so as to defeat the very purpose of the bye-law. A 'guarantor' is a person who makes a guarantee. He becomes secondarily liable for another's debt or performance in contrast to a strict surety who is primarily liable with the principal debtor. Guarantee is to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability or obligation. In the present case, the appellant has admittedly placed his fixed deposit receipts for securing the interest of respondent No.2, for furnishing a Bank Guarantee on behalf of the partnership concern of which the appellant is a partner. In other words, the fixed deposit receipts have admittedly been provided by the appellant to the Bank and it is stated that non-funded facility has been availed of by the member of the Bank against

100 per cent security and cannot be termed as a loan. This contention has been rejected by the Returning Officer as well as by the Appellate Authority. The approach taken by these authorities is in accordance with the commercial terms. Once such a practice has been adopted

and it does not offend any law, there is hardly any reason for us to interfere. Even if this is to be examined from another point of view that the process of election has to be free and fair and it would be satisfied only if the people who are involved in loan or allied transactions with the Bank would comply with the eligibility prescribed under the bye-laws. Sub-clause (iv) of Section 73-FF of the Act states that no person shall be eligible for being nominated, if he has incurred any disqualification under this Act or the Rules made thereunder. Rule 58 of the Rules also deals with disqualification of members of the Committee. It clearly states that no person shall be eligible for nomination , if he is a defaulter of any society or has earned any other disqualification provided under Section 73-FF of the Act. In exercise of its powers, the bye-laws have been framed and under bye-law 31 (iii) of the respondent-Bank, the disqualification has been added. Once a society frames a bye-law, which is otherwise in conformity with the statutory provisions, there is no reason for the Court not to permit enforcement of such disqualification against its members.

9. In our considered view, the discretion exercised by the learned single Judge does not call for any interference. There is no merit in the claim raised by the appellants. Resultantly, both the

Letters Patent Appeals are dismissed. In view of the dismissal of the LPAs, no orders are required to be passed in the Civil Applications. The Civil Applications are also dismissed.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.